

**BEFORE THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

APPLICATION OF:

FIRST CASH FINANCIAL SERVICES, INC.
d/b/a FAMOUS PAWN

Application for a Basic Business
License to Operate as a Pawnbroker
at 7301 Georgia Avenue, N.W.

**MEMORANDUM RESPONSE TO COMMENTS SUBMITTED BY
ADVISORY NEIGHBORHOOD COMMISSIONS 4A AND 4B**

First Cash Financial Services, Inc. d/b/a/ Famous Pawn ("FCFS") submits this Memorandum Response in support of the FCFS application, submitted, pursuant to D.C. Code §§ 47-2884.03 and 47-2884.05, for a Basic Business License to operate as a pawnbroker at 7301 Georgia Avenue, N.W., Washington, D.C. (the "Application"). FCFS, its officers, and its directors exhibit the characteristics necessary to command the confidence of the community, and the establishment of an FCFS outlet at the 7301 Georgia Avenue location will promote the convenience and advantage of the upper Georgia Avenue, N.W. neighborhood and the District of Columbia as a whole. *See* D.C. Code § 47-2884.05(a)(1)-(2). In contrast, the comments submitted by Advisory Neighborhood Commissions ("ANC") 4A and 4B in opposition to the Application do not touch on the ability and fitness of FCFS to operate as a licensed pawnbroker and are not relevant under the governing statute, D.C. Code § 47-2884.01, *et seq.* Thus, despite the "great weight" that the Department of Consumer and Regulatory Affairs ("DCRA") is being

called-upon to afford the recommendation of ANC 4A and ANC 4B,¹ the Application meets the requirements of the governing statute and the license should be issued.

I. BACKGROUND

FCFS is a specialty retailer and provider of consumer financial services, including pawnbroking services. It owns and operates over 560 stores in eight U.S. states and twenty states in Mexico. *See* Testimony of Rick L. Wessel, Committee on Public Services and Consumer Affairs, Public Hearing on Bill No. 18-715 at 2 (June 2, 2010), attached hereto as **Exhibit A**. FCFS is fully licensed and regulated in every jurisdiction in which it operates, including Texas, Virginia, Maryland, Illinois, Missouri, Oklahoma, South Carolina, the District of Columbia, and all of Mexico. *Id.* The common stock of FCFS is traded on the Nasdaq stock exchange, and as a public company, it is regulated by the Securities and Exchange Commission and subject to all audit and internal-control provisions of the Sarbanes-Oxley Act. *Id.* FCFS has been recognized on several occasions by Forbes magazine as one of its "200 Best Small Companies." *Id.*

FCFS currently owns and operates two pawnbroker locations within the District of Columbia. *Id.* On or around May 25, 2010, FCFS filed the subject Application to obtain a license for a proposed location at 7301 Georgia Avenue, N.W. By letter dated June 30, 2010, Advisory Neighborhood Commission ("ANC") 4A submitted comments to the D.C. Department of Insurance, Securities and Banking ("DISB") opposing the issuance of a license on the Application (the "ANC 4A Letter"). By letter dated July 4, 2010, ANC 4B submitted

¹ *See "Predatory Pawnbroker Regulation and Community Notification Temporary Act,"* D.C. Act 18-412, 57 D.C. Reg. 4535, effective July 23, 2010 (the "Temporary Act"). FCFS notes that although ANC 4B purported to submit its comments pursuant to the Temporary Act, its July 4, 2010 submission was transmitted prior to the effective date of the Temporary Act. In effect at the time was the "*Predatory Pawnbroker Regulation Community Notification Emergency Act*," D.C. Act 18-385, 57 D.C. Reg. 3838. However, since the relevant provisions of these two measures adopt the same language with respect to "notice" and "great weight", our discussion, *infra*, references the "Temporary Act."

substantially similar comments to DCRA also opposing the issuance of a license on the Application (the "ANC 4B Letter").² Both the ANC 4A Letter and the ANC 4B Letter are collectively referred to herein as the "ANC Comments."

By letter dated July 23, 2010, DCRA requested that FCFS submit a response to the ANC Comments by August 20, 2010. DCRA invited FCFS to address three issues in particular:

- (i) "the legal standards applicable to DCRA's consideration of Famous Pawn's application pursuant to D.C. Code § 47-2884.05, including what it means to accord 'great weight' to the affected Advisory Neighborhood Commissions";
- (ii) "Famous Pawn's past communications and interactions with the upper Georgia Avenue, N.W. community regarding the proposed pawnshop"; and
- (iii) "the likely effects of the proposed pawnshop on the upper Georgia Avenue, N.W. community."

Detailed responses to the ANC Comments and the issues highlighted by DCRA are provided below.

II. DISCUSSION

A. The "Great Weight" Standard

Pursuant to Section 2 of the Temporary Act, a pawnbroker license may not be issued unless "[a]ll affected Advisory Neighborhood Commissions have been accorded great weight during deliberations to approve or deny the license." Although the Temporary Act does not explicitly define "great weight," a different provision, D.C Code § 1-309.10, does provide additional explication of what "great weight" entails in situations where that particular provision

² Although ANC 4A lodged its comments with DISB, DCRA is the agency with proper jurisdiction over pawnbroker licenses. *See* 16 DCMR § 900.2. Because ANC 4A's and ANC 4B's respective comments are substantially similar, save the fact that ANC 4A sent its letter to an agency lacking jurisdiction over this matter, citations to the ANC Comments and recommendations will be to ANC 4B's July 4, 2010 letter where their arguments coincide.

applies.³ Where § 1-309.10(d) governs, "[g]reat weight requires acknowledgement of the Commission as the source of the recommendation and explicit reference to each of the Commission's issues and concerns." D.C Code § 1-309.10(d)(3)(A). Moreover, the D.C. Court of Appeals has issued several decisions establishing the boundaries and contours of the great-weight standard within the context of § 1-309.10. These decisions are instructive in interpreting the scope of the great-weight standard contained in the Temporary Act.

The Court of Appeals has described the great-weight standard as "a statutory method of forcing an agency to come to grips with the ANC view." *Kopff v. D.C. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1978). Upon receiving the ANC recommendations on a particular course of action, the agency must "elaborate, with precision, its response to the ANC issues and concerns" and "articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances." *Id.*

The agency's obligation to address ANC concerns with particularity, however, "does not require special deference to the views of an ANC." *Foggy Bottom Assoc. v. D.C. Board of Zoning Adjustment*, 791 A.2d 64, 77 (D.C. 2002) (quoting *Comm. for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1194 (D.C.1982)). "[G]reat weight' . . . does not build in some kind of quantum or presumption of deference to be accorded ANCs." *Kopff*, 381 A.2d at 1384. ANC views are not controlling or presumptively valid, and ANCs "do not enjoy expert status, entitled to special deference as such." *Neighbors Against Foxhall Gridlock v. D.C. Bd. of*

³ By its terms, the great-weight provision of § 1-309.10(d) only applies when the particular governmental entity is required to provide formal notice to the affected ANCs under § 1-309.10(b)-(c). In turn, § 1-309.10(b)-(c) only applies to particular governmental conduct. For example, under § 1-309.10(b)(3), DCRA is only required to provide formal notice to affected ANCs regarding "applications for construction, demolition, raze, and public space permits." The Temporary Act adds pawnbroker-license applications to the types of government conduct which trigger DCRA's obligation to provide formal notice to the relevant ANCs, and directs that affected ANCs be afforded great weight during deliberations. See Temporary Act § 2. Unlike § 1-309.10(d), however, the Temporary Act does not explicitly require DCRA to articulate its decision in writing "with particularity and precision the reasons why the [ANC] does or does not offer persuasive advice under the circumstances." Compare § 1-309.10(d)(3)(B), with Temporary Act § 2.

Zoning Adjustment, 792 A.2d 246, 249-50 (D.C. 2002) (citations omitted); *Kopff*, 1383-84 (refusing to adopt ANC's interpretation of "great weight" as requiring the agency to adopt the ANC's viewpoint unless it is unreasonable). The agency is merely required to give ANC recommendations "whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others," while paying "specific attention to the source, as well as the content, of ANC recommendations." *Kopff*, 381 A.2d at 1384; *see also Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 993 (D.C. 1985) ("[The agency] is not obliged to follow the ANC's recommendations or adopts its views").

Thus, under Court of Appeals precedent, the great-weight regime is largely procedural, providing a mechanism by which ANC views may be effectively communicated, though not necessarily adopted. *See Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 90-91 (D.C. 1978). Under certain prescribed circumstances, the agency must give the relevant ANCs notice of the potential agency action. *See, e.g.,* Temporary Act § 2; D.C. Code § 1-309.10(b)(3). If an ANC supplies the agency with its views, the agency must explicitly acknowledge the ANC as the source of the recommendation, directly address the particular issues and concerns raised by the ANC, and provide specific findings and conclusions with respect to each issue or concern raised. *See Foggy Bottom Assoc.*, 791 A.2d at 77 ("All that the law demands is that the views of the ANC be specifically addressed, and not ignored or overlooked . . ."); *Kopff*, 381 A.2d at 1384. But the agency is not under any legal obligation to place particular substantive importance on the views expressed by the ANC. So long as ANC views are properly considered and addressed, the agency is free to discount ANC recommendations and to take action counter to them. *See, e.g., Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 929, 932-34 (finding that the

agency gave "great weight" to ANC views despite declining to adopt them); *Watergate West, Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 769 (D.C. 2003) (same); *Neighbors Against Foxhall Gridlock*, 792 A.2d at 249-50 (same); *Foggy Bottom Assoc.*, 791 A.2d at 77; *Upper Georgia Ave. Planning Comm.*, 500 A.2d at 993 (same).

Moreover, in order to be afforded great weight, the particular issue or concern raised by the ANC must be relevant to the legal standards governing the discretion of the agency. If the concern raised is irrelevant, the agency is not obliged to consider and discuss the issue. *See Kalorama Citizens Assoc. v. D.C. Bd. of Zoning Adjustment*, 934 A.2d 393, 409 n.30 (D.C. 2007); *Wheeler*, 395 A.2d at 91. This is because "[t]he Council did not intend to empower [ANCs] to expand the factors that a board or agency may otherwise lawfully consider in reaching its decision." *Wheeler*, 395 A.2d at 91 n.10. As a result, any issues raised in the ANC Comments that fall outside the scope of D.C. Code § 47-2884.05 should be rejected outright.

B. Response to the ANC Comments

The ANC Comments purportedly address two statutory prerequisites to issuance of the license to FCFS: (i) "that the character of such applicant . . . [is] such to command the confidence of the community," D.C. Code § 47-2884.05(a)(1); and (ii) "that permitting such applicant to engage in such business will promote the convenience and advantage of the community," § 47-2884.05(a)(2). *See* ANC 4B Letter at 2; ANC 4A Letter at 1. However, the particular issues the ANC Comments point to are either irrelevant to the statutory considerations or not based in fact. Although the ANC Comments are said to be afforded great weight, DCRA consideration of the Application is still governed by the actual legal requirements of § 47-2884.05 and still must be based on substantial evidence. *See Foggy Bottom Assoc.*, 791 A.2d at 74. Since the Application and the considerations outlined in this Memorandum Response demonstrate the ability of FCFS

to command the confidence and promote the convenience and advantage of the community, the license should issue.

1. Characteristics that Command the Confidence of the Community

Pawnbrokers licenses should be issued to applicants whose "financial responsibility, experience, character, and general fitness . . . are such as to command the confidence of the community." D.C. Code § 47-2884.05(a)(1). FCFS, its officers, and its directors undoubtedly meets these criteria. FCFS is a leader in the consumer financial services and pawnbroking fields that has been in business for over twenty years. *See* Exhibit A at 1-2. It operates over 560 stores in the United States and Mexico. *Id.* As a publically-traded company, it is regulated by the Securities and Exchange Commission and subject to the accounting and internal-controls provisions of the Sarbanes-Oxley Act. *Id.* FCFS locations are also regulated by the laws of each jurisdiction in which FCFS operates, including the District of Columbia. *See id.*

No question has been raised about FCFS's history of compliance with these extensive regulatory regimes or about FCFS's financial ability to operate at the 7301 Georgia Avenue, N.W. location in a responsible manner. Instead, the ANC Comments challenge the "character" of FCFS with vague references to recent events that, in many instances, mischaracterize the "evidence" submitted by the ANCs. The factors relied upon by the ANC Comments are unavailing, and DCRA should find that FCFS exhibits the financial responsibility, experience, character, and general fitness necessary to command the confidence of the community.

a. *FCFS Has Been Forthright About the Nature of its Proposed Operations at 7301 Georgia Avenue, N.W.*

The ANCs argue that FCFS should not be granted a license because it began renovating the premises "without notifying the community of their intentions to locate a pawnshop there," an alleged omission that the ANC Comments hyperbolically characterize as a "cloak of

concealment." *See* ANC 4B Letter at 2. However, the "Statement of Sara Green Concerning Conversations with Famous Pawn Representatives," upon which the ANC Comments rely in support of the alleged lack of notification, reveals that representatives of ANC 4B and FCFS communicated about the proposed pawnshop at 7301 Georgia Avenue, N.W. as early as February 17, 2010, and that extensive communications continued thereafter. *See* ANC 4B Letter, Ex. B. Legislation requiring *the District of Columbia* to notify ANCs of the submission of pawnshop-license applications was not even enacted until April 29, 2010. *See* Predatory Pawnbroker Regulation and Community Notification Emergency Act of 2010, Act. No. 18-0385, 57 D.C. Reg. 3838 (May 7, 2010). Furthermore, the ANC Comments themselves recognize that FCFS did not submit its Application until May 25, 2010. *See* ANC 4B Letter at 1.

Notwithstanding the admission by the ANCs that FCFS discussed the proposed pawnshop well before the Application was even submitted and before there was any legal requirement for DCRA to give notice of the Application, the attempt to impose "disclosure" requirements on FCFS that are not contemplated or mandated by any governing rules or regulations should not be countenanced. *See Wheeler*, 395 A.2d at 91 & n.10.

b. FCFS Was Under No Obligation to Attend Scheduled ANC Meetings But Nevertheless Did so Under its Own Volition

The ANC Comments attempt to impugn the "character" of FCFS by alleging that it declined an invitation to attend general meetings convened ANC 4B. *See* ANC 4B Letter at 2. This assertion is inapposite for a number of reasons. First, FCFS is under no obligation—legal, ethical, moral, or otherwise—to attend meetings convened by ANC 4B. ANC 4B does not wield the subpoena power, and its legally-prescribed role within the District's administrative governance regime does not empower it to impose additional licensing requirements on FCFS. *See Wheeler*, 395 A.2d at 91 & n.10. Second, despite declining the invitation to attend the

meeting on February 22, 2010, FCFS representatives did meet with ANC 4B on at least two occasions, March 25, 2010, and May 21, 2010, and attended a ANC 4A community meeting on April 29, 2010. *See* ANC 4B Letter at 3 & Ex. 2 at 2-3.⁴ Third, with regard to discussions between FCFS and ANC 4B regarding the February 22, 2010 meeting, the ANC Comments take the discussions out of context and fail to note that FCFS offered to field questions from ANC 4B about FCFS's business with the expectation that ANC 4B would relay FCFS's answers to the community. *See* ANC 4B Letter at 2. ANC 4B declined to do so. *See id.*

c. The Timing of FCFS's Pre-Application Meetings with ANC and Tangentially-Related Legal Developments Are Irrelevant

The ANC Comments attempt to rely on a presumed relationship between FCFS's attendance at the ANC community meeting on April 29, 2010, and legal developments related to the recognition of the notice obligation of DCRA to the ANC in pawnshop-licensing matters. *See* ANC 4B Letter at 3. As noted above, FCFS's attendance at ANC meetings is legally irrelevant, and it therefore follows *a fortiori* that its motives for attending or not attending such meetings are also irrelevant. It should be further noted that the legal developments cited by the ANC Comments—an April 13, 2010 order by the Superior Court and the enactment of Predatory Pawnbroker Regulation and Community Notification Emergency Act of 2010—impose obligations on the Government of the District of Columbia, not applicants such as FCFS.

d. FCFS Intends to Brand the 7301 Georgia Avenue, N.W. Location as "First Cash Jewelry & Loan"

The ANC Comments also attempt to argue that an artist's rendition of the exterior of the premises that identifies the business with the words "First Cash," as opposed to "Famous Pawn," is somehow misleading. However, FCFS intends to brand the 7301 Georgia Avenue, N.W. location as "First Cash Jewelry & Loan." The ANC Comments point to no law or regulation

⁴ FCFS representatives also attended a second community meeting on June 28, 2010. *See*, Exhibit K, at 3.

that requires or encourages pawnshop licensees to brand their stores with the same name that appears on their application.⁵ FCFS also notes that the picture attached as Exhibit C to the ANC 4B Letter is an artist's conceptualization of the proposed signage and does not reflect the actual appearance of the exterior of the premises.

e. FCFS's Political Contributions Are Irrelevant

The ANC Comments allege that FCFS has made political contributions to members of the D.C. Council and argue that this constitutes a relevant factor to consider under D.C. Code § 47-2884.05(a)(1). The ANC views in this regard are misguided. Contributions to political campaigns are governed by the District's campaign-finance laws, not its pawnbroker-licensing requirements. The ANC Comments suggestion this lawful behavior by FCFS should be considered in the licensing decision is an improper attempt to expand the licensing criteria beyond the statutory requirements. *See Wheeler*, 395 A.2d at 91 & n.10.

f. Alleged Comments by an Unidentified Real Estate Agent for the 7301 Georgia Avenue, N.W. Property Are Immaterial

The ANC 4A Letter also alleges that an unidentified real estate agent for 7301 Georgia Avenue, N.W. initially informed ANC 4A that the premises "was to be a jewelry store." *See* ANC 4A Letter at 3. However, ANC 4A does not explain the relevance of this statement or how it impacts the consideration of the FCFS Application.⁶ Nevertheless, FCFS notes that a substantial portion of the property pledged and sold at its pawnshops is jewelry, and FCFS intends to name the location "First Cash Jewelry & Loan." In addition, as outlined above, FCFS

⁵ The ability to use "trade names" in signage is common in retail business operations, and is tied to notification of such to applicable business regulatory authorities.

⁶ Although it is not clear, ANC 4A appears to attempt to impute the real estate agent's alleged comments to FCFS. *See* ANC 4A Letter at 2 and Ex. A at 3. ANC 4A provides no rationale to justify the imputation of this double-hearsay statement to FCFS.

has had numerous discussions with ANC 4A and ANC 4B disclosing, in no uncertain terms, that the business to be operated at 7301 Georgia Avenue, N.W. will in fact be a pawnshop.

2. FCFS's Establishment at 7301 Georgia Avenue, N.W. Will Promote the Convenience and Advantage of the Community

FCFS pawnbroking business provides needed consumer financial services that other businesses and industries in the community are unable or unwilling to provide. Pawn loans are consumer credit transactions whereby the customer "pledges" an item of personal property to the pawnbroker as collateral for a loan. In exchange, the customer is advanced credit in an amount commensurate with the assessed value of the item pledged. At the end of the loan term, which is usually a one-month period, the customer can either repay the loan plus interest and redeem their collateral, or they can elect not to repay the loan and simply forfeit the item. Because pawn transactions are non-recourse loans, FCFS cannot initiate enforcement action against the customer and does not report non-performing loans to credit reporting agencies. Moreover, FCFS does not charge late fees or impose penalties. Forfeited collateral is simply sold by FCFS in retail transactions.

The advantages provided to the community by FCFS's business are twofold: (i) it provides an efficient method to secure convenient, relatively small consumer loans that are otherwise not available in the marketplace; and (ii) it provides a market for low-cost, high-quality secondhand goods.

FCFS projections and historical data indicate that it will derive a substantial proportion of its revenues from retail transactions, particularly jewelry sales. Historically, 33% of FCFS revenues in its D.C. stores are from taxable retail sales, 21% of its D.C. revenues are from non-

taxable wholesale revenues,⁷ and 46% of its D.C. revenues are from interest income from loan transactions. Thus, FCFS currently obtains approximately 54% of its D.C. revenues from business other than interest on pawn loans. Moreover, given the location of the proposed 7301 Georgia Avenue, N.W. store, FCFS anticipates that non-interest revenues will grow to 60% to 65%, given the above-average quality of goods expected to be sold at this location.

In terms of absolute dollar amounts, FCFS projects taxable revenues from retail sales to be approximately \$300,000 to \$400,000 annually. This translates into projected annual tax revenues of approximately \$17,250 to \$23,000 for the District of Columbia from this one location.

In addition to the benefits offered by retail sales at a 7301 Georgia Avenue, N.W. location, pawn loans also provide advantages to the community and District residents. The average loan size in existing FCFS D.C. locations is \$335. *See* Ex. A at 4. Consumers simply cannot obtain cash credit in such denominations from traditional financial institutions such as banks and credit unions. For example, from December 2007 to December 2009, the Federal Deposit Insurance Corporation conducted a "Small-Dollar Loan Pilot Program," to study bank-originated, relatively small-dollar loans.⁸ *See "A Template for Success: The FDIC's Small-Dollar Loan Pilot Program"*, FDIC Quarterly, 2010, Vol. 4, No. 2 at 28, *available at*

⁷ "Wholesale revenues" refers to revenues gained from selling forfeited collateral in wholesale transactions, particularly those relating to "scrap" jewelry, *i.e.* jewelry whose principal value comes from the gold it contains, rather than any latent value as a consumer good.

⁸ The District of Columbia has advocated for loans similar to the "Small-Dollar Loan Pilot Program" through its "Bank on DC" program. Bank on DC encourages local banks to make services more readily available to so-called "unbanked" consumers. *See Website of Deputy Mayor for Planning & Economic Development, Bank on DC – Everyone Is Welcome*, <http://dcbiz.dc.gov/dmped/cwp/view,a,1365,q,610599.asp>, attached hereto as **Exhibit B**. Among the "baseline criteria" participating banks must agree to is "[i]ncreasing the availability of products and services, such as affordable small dollar loans . . ." *Id.* However, Bank on DC representatives have stated that the smallest loans participating banks offer is \$500. As with the FDIC program, Bank on DC demonstrates that the loan amounts that FCFS typically provides its customers are not available from traditional financial institutions, even where government initiatives specifically encourage small-dollar lending.

http://www.fdic.gov/bank/analytical/quarterly/2010_vol4_2/FDIC_Quarterly_Vol4No2_SmallDollar.pdf, attached hereto as **Exhibit C** (the "FDIC Report").⁹ As its name implies, the FDIC initiative was a pilot program, intended to study the feasibility of a transaction type that is, by definition, not widely available. *See id.* at 34 ("Banks other than those in the pilot provide small-dollar loans, but it is likely that most banks do *not* offer these loans."). But even in a program designed to see whether banks could offer small-dollar loans, the average loan in the "small-dollar loan" ("SDL") category was \$724. *Id.* at 31, Table 4. And of twenty-two banks that reported a total of 3,010 SDL loans, the lowest loan made among all the banks was for \$445. *Id.* The FDIC program also targeted a 36% annual percentage rate ("APR"), which is 12% higher than the APR which new pawnshops would be able to charge under the Temporary Act. *Compare* FDIC Report at 28, *with* Temporary Act § 2(b). In addition, as unsecured loans to individuals, small-dollar bank loans are personally enforceable against the consumer and can negatively affect his or her credit rating, unlike FCFS's pawn loans.

The proposed business at 7301 Georgia Avenue, N.W. clearly provides a cash-based, consumer-credit transaction that may not otherwise be available to the community. Moreover, pawn loans offer a level of convenience and affordability that is lacking even in non-cash consumer-credit transactions. Credit card debt is personally enforceable against the consumer and not always available at competitive rates, if at all, for consumers with below average credit scores or who lack established banking relationships. Furthermore, credit card debt subjects the consumer to the potential of annual fees and late fees. Similarly, bank overdraft fees and bounced checks cause the consumer to incur large fees and penalties. In light of these factors,

⁹ The FDIC Report states that the pilot program was designed to study bank-originated, small-dollar loans "as an alternative to high-cost credit products such as payday loans" FDIC Report at 28. FCFS notes that, despite the ANC Comments effort to conflate payday loans with pawn loans, *see* ANC 4B Letter at 5 and Ex. F (citing paper entitled "Does Fringe Banking Exacerbate Crime Rates? Social Disorganization and Ecology of Payday Lending"), the two services are not the same.

pawn loans enhance consumer choice by offering a simple, non-recourse loan that often proves cheaper than other, more traditional financial products. *See* First Cash Financial Services d/b/a/ Famous Pawnbrokers, Pawn Industry Fact Book at 4 (July 2, 2010) (Comparison of Pawn Fees v. Alternative Products), attached hereto as **Exhibit D**. Such an alternative promotes the convenience and advantage of the community.

The proposed 7301 Georgia Avenue, N.W. location will also result in a functioning, well-managed business operating in commercial space that now lies vacant. FCFS is in the process of completing a wholesale renovation of the premises' interior. A series of photographs showing the renovated space are attached hereto as **Exhibit E**. In addition, photographs depicting an artist's rendering of the exterior storefront are attached hereto as **Exhibit F**.

In addition, the FCFS business model, which emphasizes customer satisfaction and loyalty, will provide the upper Georgia Avenue, N.W. neighborhood with a business that provides a positive consumer experience. In conjunction with the recent D.C. Council consideration of legislation affecting pawnshops, FCFS conducted an informal survey of the customers at FCFS's current D.C. locations. A series of actual survey responses are attached hereto as **Exhibit G**. As these customer testimonials demonstrate, FCFS pawnshops provide a desperately needed service to many members of the community.

Finally, the ANC Comments attempt to impugn the pawnshop industry generally is misguided for two reasons. First, D.C. Code § 47-2884.05(a)(1)-(2) is clearly intended to focus DCRA's licensing investigation on the individual applicant. It is *the applicant's* "financial responsibility, experience, character, and general fitness" and *the applicant's* business that are identified as the subject of inquiry. *See id.* Second, the logic advanced by the ANC Comments amounts to an argument for DCRA to impose an indefinite moratorium on pawnshop licenses.

But it is for the D.C. Council, not ANC 4B and 4A, to determine whether as a matter of policy pawnshops should be permitted to operate within the District of Columbia. And D.C. Code § 47-2884.05, as amended, clearly contemplates that pawnshop licenses "shall . . . issue to the applicant" once the statutory and regulatory prerequisites relating to the individual applicant have been satisfied.

Examination of FCFS's proposed business at 7301 Georgian Avenue, N.W. reveals that it will promote the convenience and advantage of the community. The subsections that follow contain responses to the specific points raised in the ANC Comments.

a. The 7301 Georgia Avenue, N.W. Location Will Serve Residents within the Community

While FCFS expects that a pawnshop at the 7301 Georgia Avenue, N.W. location will cater to customers from the whole of the District of Columbia and surrounding jurisdictions, FCFS also perceives demand for pawnbroker services within the immediate vicinity of the location. An analysis of the geographical distribution of current FCFS D.C. customers reveals that a high concentration resides in the 20010 (151 customers), 20011 (185 customers), and 20012 (25 customers) postal zip codes, which are comprised of upper Georgia Avenue, N.W. neighborhoods. *See* D.C. Customer Distribution, attached hereto as **Exhibit H** (breaking down the geographic distribution of FCFS's customers as of May 6, 2010). These 361 customers represent approximately 29% of FCFS's current D.C. customers. For ease of reference, maps delineating the boundaries of the District's postal zip codes and ANC neighborhoods are attached hereto as **Exhibit I**.

Furthermore, failure to issue the license will deprive area residents of a needed retail operation. As previously highlighted, FCFS derives a substantial portion of its D.C. revenues through retail transactions, *i.e.* through the sale of consumer goods to members of the public, and

FCFS expects that the 7301 Georgia Avenue, N.W. location will obtain an even higher proportion of its revenues from retail sales. Providing a retail outlet for area residents to purchase high-quality, low-cost goods serves the convenience and advantage of the community, and an urban location such as 7301 Georgia Avenue, N.W. is designed to cater to residents in the immediate vicinity, as well as other "walk-in" business.

It also should be noted that "community," as used in § 47-2884.05, is not synonymous with "affected Advisory Neighborhood Commissions," as used in § 2 of the Temporary Act. Indeed, § 47-2884.05's reference to "community" was enacted in 1956, *see* An Act to Regulate and License Pawnbrokers in the District of Columbia, 70 Stat. 1036, 1037 § 5(a) (1956), approximately 17 years prior to the enactment of home rule, *see* 87 Stat. 774 (1973), and approximately 19 years prior to the statute establishing ANCs, *see* D.C. Law 1-21 (Oct. 10, 1975). The "community" served by local businesses certainly includes more than just residents of the ANCs falling directly adjacent to the business address. "Community" is an amorphous concept, whose accepted definition extends all the way to "society as a whole." *See* Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/community>. Under the circumstances, an overly narrow, geographically restricted view of "community" is unwarranted, and unduly restricts the commercial vitality of any retail business enterprise. Thus, "community" should be interpreted to account for all District residents whose interests may be served by the 7301 Georgia Avenue, N.W. location.

b. FCFS's Business Serves a Wide Cross-Section of Society

FCFS disputes the ANC Comments suggestion that "[p]awnshops, like payday lenders and other fringe bankers (e.g., check cashers and rent-to-own stores) are more suited to 'low-income families' and persons living in 'distressed communities' in the United States." ANC 4B

Letter at 5. In support of this statement, the ANC Comments cite an unpublished document written by Dr. Charis Kubrin, et al., "Does Fringe Banking Exacerbate Crime Rates? Social Disorganization and the Ecology of Payday Lending," (March 22, 2010). *See* ANC 4B Letter at 5 & Ex. F at 4-6. In citing Dr. Kubrin's paper, the ANC Comments fail to place it in its proper context. The paper is primarily concerned with payday lending, a financial service that is quite distinct from pawn lending. Thus, when the ANC Comments cite Dr. Kubrin's paper for the proposition that pawnshops "are suited" for households making \$30,000 or less per year, the ANC Comments misstate the position advanced by Dr. Kubrin. The paper actually states, "A study of Colorado borrowers found that those earning less than \$30,000 a year make up two-third of *payday lender* customers." *See* ANC 4B Letter, Ex. F at 6. Moreover, two sentences later Dr. Kubrin discloses that a *nationwide survey* found that 51.5% percent of *payday lending* borrowers "earned between \$25,000 and \$50,000." *Id.* The ANC Comments' mischaracterization of the contents and thrust of its own "evidence" indicates that it should be discounted.

In any event, the ANC Comments reliance on so-called "socioeconomic reasons," even if such factors are accurately conveyed, is misguided. Individuals earning less than the median income of a particular neighborhood are no less a part of the "community." In fact, they are the members of the community that stand to benefit most from the availability of alternative financial services and harmed the most by efforts to deny such services. Furthermore, FCFS services are not targeted to a particular socioeconomic demographic. Rather, given the nature of the pawnshop industry, the FCFS clientele and inventory tend to reflect the composition of the surrounding community. *See* ANC 4B Letter, Ex. B at 1 (discussing inventory at the FCFS Georgetown location).

c. *The Proposed Pawnshop at 7301 Georgia Avenue, N.W. Will Serve the Community by Fostering Competition and Providing Choice*

The ANC Comments note that a pawnshop operated by a different owner is located at 6212A Georgia Avenue, N.W., but fails to provide any evidence or developed argument as to why this counsels against issuance of the license. In fact, the District of Columbia is served by a dearth of pawnshops compared to the numbers seen in other U.S. cities. *See* Exhibit C at 7 (Number of Pawn Shops in Selected U.S. Cities) (comparing the number of pawnshops in various U.S. cities, including, for example, the District of Columbia (9), Houston (191), and Denver (67)). FCFS's proposed pawnshop at 7301 Georgia Avenue, N.W. will help bring the supply and demand for pawnbroker services into further equilibrium, will foster competition, and provide consumer choice.

d. *Pawnshops Do Not Lead to an Increase in Neighborhood Crime*

The notion that pawnshops lead to an increase in neighborhood crime is a common misconception, based on outdated stereotypes of the pawn industry. Pawnshops are heavily regulated, and D.C. law requires all licensed pawnbrokers to adhere to strict reporting requirements and to cooperate with police investigations. *See* D.C. Code § 47-2884.11; 16 DCMR Parts 905 and 908. Due to the existence of a regulatory regime specifically aimed at preventing pawnshops from dealing in stolen goods, thieves rarely use pawnshops to liquidate goods, as the advent of on-line auction sites, on-line classified advertising, and weekend flea markets now provide criminals with less traceable methods for liquidating stolen goods. In fact, less than one-quarter of 1% of all items received in a typical pawnshop are determined to be stolen. *See* Exhibit A at 3.

ANC "evidence" to the contrary is unavailing. The ANC Comments cite yet another unpublished document written by Dr. Charis Kubrin—"Pawnshops and Neighborhood Crime: An Extrapolation from 'Does Fringe Banking Exacerbate Crime Rates? Social Disorganization and the Ecology of Payday Lending'"—which is misleadingly presented as establishing some link between the presence of pawnshops and neighborhood crime. *See* ANC 4B Letter at 5-6 & Ex. H. However, Dr. Kubrin's three-page "extrapolation" is merely an unsupported opinion that contains no citations or analysis of actual evidence or data. *See* ANC 4B Letter, Ex. H. Indeed, virtually the entire document discusses Dr. Kubrin's prior study of *payday lending* before fleetingly referencing the author's conclusion that she would expect a similar "link" between pawnshops and crime. Even assuming Dr. Kubrin's unpublished study of payday lending is credible, she provides no reasoning, much less evidence, why the results from that study would apply with equal force to an entirely different industry. Reliance on such vague generalizations and innuendo regarding the relationship between pawnshops and crime do not constitute "substantial evidence" upon which the agency may act. *See Foggy Bottom Assoc.*, 791 A.2d at 74.

e. The ANC Comments Provide No Evidence that Pawnshops Decrease Property Values

The ANC Comments argue that the establishment of a pawnshop at 7301 Georgia Avenue, N.W. will depress property values. *See* ANC 4B Letter at 6. However, the ANCs present no evidence in support of this bald assertion. Instead, they offer only the statement of Randy Boehm, Vice-President of the Gateway-Georgia Avenue Revitalization Corporation, a private nonprofit that seeks to redevelop "the Georgia Avenue commercial corridor extending

from Fern Street, N.W. to Eastern Avenue, N.W." *See* ANC 4B Letter, Ex. I.¹⁰ Like the ANC's, Mr. Boehm does not offer evidence in support of his conclusion that property values will be affected, but simply communicates his unsupported "alarm[]" that a pawnshop in the Gateway will signal to persons outside of our community that the Gateway has reverted to the semi-lawless atmosphere that we confronted during the 1990s." As discussed above, however, the notion that pawnshops contribute to crime is an inaccurate anachronism that the ANC Comments do not support with real evidence. Furthermore, the unsupported opinion of Mr. Boehm does not amount to "substantial evidence" required to support a finding that FCFS's proposed license will not promote the advantage and convenience of the community. *See Foggy Bottom Assoc.*, 791 A.2d at 74.

C. FCFS's Communications and Interactions with the Upper Georgia Avenue, N.W. Community Regarding the Proposed Pawnshop

FCFS has endeavored to establish an amicable, constructive relationship with the upper Georgia Avenue, N.W. community. Its efforts have been frustrated, however, the unwillingness of ANC 4B and ANC 4A to entertain the possibility of reaching a workable compromise. Rather than evaluate FCFS's Application on the merits, the ANC's seem intent on opposing the issuance of any pawnshop license, in any form, without compromise. Since FCFS is in the business of owning and operating pawnshops, the situation is untenable.

On February 17, 2010, Chris Lee, a FCFS representative, contacted ANC 4B01 Commissioner Sara Green after receiving a request through the real estate agent for 7301 Georgia Avenue, N.W. to attend a ANC 4B's February 22, 2010 public meeting. Mr. Lee

¹⁰ The ANC 4A Letter also implies that a pawnshop at 7301 Georgia Avenue, N.W. will "adversely affect the DC Government's plan to renovate the Georgia Avenue corridor" and "the development of Walter Reed." ANC 4A Letter at 5. However, ANC 4A does not attempt to provide any causal nexus between the proposed pawnshop and efforts to develop portions of Georgia Avenue or Walter Reed. Instead, it seems ANC 4A is merely expressing a preference for one form of commercial operation over another, a consideration not contemplated by § 47-2884.05 and therefore not relevant to the consideration. *See Wheeler*, 395 A.2d at 91 & n.10.

declined Ms. Green's request, but advised her that he was willing to field questions about FCFS and its business, with the understanding that the answers would be conveyed to the community. Ms. Green rejected Mr. Lee's offer. During the February 17, 2010 conversation, Mr. Lee and Ms. Green specifically discussed the nature of the proposed pawnshop at the 7301 Georgia Avenue, N.W. location. *See* ANC 4B Letter, Ex. B. at 1.

On February 25, 2010, Ms. Green again demanded that FCFS attend a public meeting and advised Mr. Lee that ANC 4B adopted a resolution *on February 22, 2010*, opposing FCFS plans for 7301 Georgia Avenue, N.W. *See id.* at 2.¹¹ Following the February 25, 2010 conversation, FCFS suggested in an e-mail to ANC 4B that it would consider participating in a charitable program to benefit the community, similar to FCFS's efforts elsewhere. *See id.*

On March 25, 2010, representatives of FCFS and various community members convened at the offices of Councilmember Bowser. FCFS explained the nature of its business and its plans for the 7301 Georgia Avenue, N.W. location. FCFS also discussed its 28-year history of operations within the District, and explained that the 7301 Georgia Avenue, N.W. location was intended to replace its 3228 Georgia Avenue, N.W. store because the latter would be closing soon due to the building owner's plans to redevelop the property. *See id.*, Ex. B at 2-3; *id.*, Ex. E at 1-2. At the meeting, FCFS emphasized its willingness to work the community. *See id.*, Ex. E at 2.

On April 29, 2010, Mr. Lee attended a special ANC 4A meeting convened specifically to discuss pawnshops. At the meeting, Mr. Lee gave a presentation discussing why the proposed FCFS pawnshop would provide needed services to the community. *See id.*, Ex. E at 3.

¹¹ This demand from Ms. Green begs the question "if the ANC has determined to oppose the FCFS location at 7301 Georgia Avenue, what was the intended purpose of the FCFS appearance at a public meeting at a future date "?

Counsel for FCFS again met with various ANC 4B and ANC 4A leaders on May 21, 2010, to discuss the proposed pawnshop. Counsel for FCFS explained the particulars of the type of pawnshop FCFS envisioned at the location, and attempted to assuage their concerns about negative stereotypes often associated with pawnshops. *See id.*, Ex. E at 5. Also at the meeting, FCFS advised the ANC representatives that FCFS would be willing to consider entering into a written agreement with ANC 4B regarding the nature of its operations at 7301 Georgia Avenue, N.W. *See id.*, Ex. B at 3.

Following up on FCFS's offer to negotiate a written agreement between FCFS and ANC 4A and 4B, counsel for FCFS sent a written series of proposals to the ANCs on June 21, 2010, outlining various concessions FCFS was willing to make to address ANC concerns. A copy of the June 21, 2010 proposal is attached hereto as **Exhibit J**. In the course of sending the written proposal, counsel for FCFS also advised the recipients that FCFS would attend a June 28, 2010 meeting of ANC 4B. Counsel for FCFS also sent an e-mail on June 22, 2010, to ANCs 4A and 4B seeking their reaction to FCFS's proposal and requesting a meeting to further discuss.

By letter received by counsel for FCFS on June 24, 2010, ANC 4B01 Commissioner Sara Green advised that the ANC had rejected FCFS's proposals outright, and declined to respond with a counterproposal. Instead, Ms. Green simply wrote:

[W]e concluded that your proposal lacked merit in that it did not offer anything which addressed or eliminated our principal reasons for opposing the establishment of your client's proposed pawnshop. These reasons have been previously communicated to both you and your client. We therefore see no need to deliberate further on your proposal or to recommend its consideration by others.

A copy of the June 24, 2010 response to FCFS's proposal is attached hereto as **Exhibit K**.

In response to the summary rejection of the reasonable proposals and the refusal to engage in further discussion, counsel for FCFS wrote to Ms. Green to express surprise at the

ANCs refusal to continue constructive negotiations, but that FCFS would still be accepting ANC 4B's invitation to attend a meeting scheduled for June 28, 2010. A copy of this June 25, 2010 correspondence is attached hereto as **Exhibit L**. In response, Samuel Sharpe, Esq., ostensibly on behalf of ANC 4A, ANC 4B, and other interested individuals, sent counsel for FCFS a letter on June 27, 2010, chastising FCFS for attempting to re-initiate settlement discussions and alleging that FCFS's settlement proposal was unsolicited. *See* Letter dated June 27, 2010, from Samuel Sharpe, Esq. to Roderic Woodson, Esq., attached hereto as **Exhibit M**. FCFS notes that Exhibit E to ANC 4B's letter to DCRA specifically notes that counsel's offer to "draft an outline in preparation of negotiating a 'Voluntary Agreement' between First Cash and the community . . . was accepted." *See* ANC 4B Letter, Ex. E at 6.

In light of the recent correspondence from Ms. Greene and Mr. Sharpe, FCFS has concluded that ANC 4A and ANC 4B will not consider any reasonable offers of compromise at this juncture.

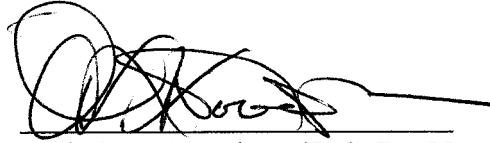
III. CONCLUSION

The ANC Comments, even if entitled to great weight, are not controlling. Rather, the agency must place consideration of the ANCs' view in their proper context, "*including the evidence and views presented by others.*" *Neighborhood Against Foxhall Gridlock*, 792 A.2d at 250 (emphasis in original). Moreover, great-weight status does not "empower [ANCs] to expand the factors that a board or agency may otherwise lawfully consider in reaching its decision." *Wheeler*, 395 A.2d at 91 n.10. Where the ANC Comments are not supported by evidence and where they fall outside the scope of the statute, they should not be afforded any deference. Because the Application amply demonstrates that FCFS has satisfied the statutory requirements

set forth at DC Code §47-2885.05, a license to operate a pawnshop at 7301 Georgia Avenue,
N.W. should be issued.

Dated: August 19, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roderic L. Woodson", written over a horizontal line.

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